

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 08-03222 CW

GREGORY JONES and DARLENE JONES, as
successor in interest to Eric Jones;
GREGORY JONES, an individual; and
DARLENE JONES, an individual,

ORDER ON MOTIONS IN
LIMINE

Plaintiffs,

v.

COUNTY OF DEL NORTE, CALIFORNIA, a
political subdivision of California;
RAMSAY WILLIAMSON, an individual,

Defendants.

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As discussed at the final pre-trial conference, the Court
rules on the parties' motions in limine as follows:

Plaintiffs' Motions in Limine

1. Motion to Bifurcate Trial

DENIED as moot. At the hearing on these motions, Plaintiffs
withdrew this motion.

2. Motion to Exclude Defense Expert Dr. Emily Keram's Testimony
Regarding Jones' Mental State and Psychiatric Condition on the
Day of the Shooting.

DENIED. Dr. Keram's testimony about Jones' mental state at
the time of the shooting is relevant because, in "cases such as
this, where what the officer perceived just prior to the use of

1 force is in dispute, evidence that may support one version of
2 events over another is relevant and admissible." Boyd v. City and
3 County of San Francisco, 576 F.3d 938, 944 (9th Cir. 2009). Keram
4 may testify as to the factual basis for her opinion, including some
5 of the otherwise inadmissible evidence to which Plaintiffs
6 objected, because its "probative value in assisting the jury to
7 evaluate the expert's opinion substantially outweighs [its]
8 prejudicial effect." Fed. R. Evid. 703. The Court will instruct
9 the jury that the evidence is relevant to assess Williamson's
10 credibility and the truth of Williamson's version of events.
11 However, Keram may not testify about (1) Jones' prior marijuana or
12 alcohol use, (2) Jones' statements to Dr. Regan in December, 2003
13 and (3) the January 1, 2004 incident concerning his sister. The
14 probative value of these facts does not substantially outweigh the
15 prejudicial effect.

16 Plaintiffs' arguments that Keram's opinions should be excluded
17 under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579
18 (1993), have no merit. Keram's opinions have factual support and
19 are reliable.

20 3. Motion to Exclude Audio Forensics Expert's Opinions

21 DENIED. Dr. Begault's expert testimony is relevant and
22 reliable. Begault may testify about the contents of Deputy
23 Williamson's belt audio recording.

24 4. Motion to Exclude All Evidence Not Known by Williamson at the
25 Time of the Shooting

26 DENIED. The Court will not make a blanket exclusion of all
27 evidence not known by Williamson at the time of the shooting.
28 Under Boyd, evidence beyond the scope of what Williamson knew at

1 the time of the shooting may be relevant to assess Williamson's
2 credibility and the truth of Williamson's version of events. 576
3 F.3d at 944.

4 5. Motion to Exclude the Toxicology Results from Jones' Autopsy
5 and Jones' Prior Drug Use.

6 GRANTED. Evidence from the toxicology report of marijuana in
7 Jones' system at the time of his death is excluded as more
8 prejudicial than probative. Similarly, evidence of Jones' prior
9 marijuana use is excluded.

10 6. Motion to Exclude Evidence of Jones' Criminal History

11 GRANTED. Jones' criminal history is not relevant to
12 Plaintiffs' claim for wrongful death damages. The evidence is also
13 excluded under Federal Rule of Evidence 403.

14 7. Motion to Exclude Hearsay Statements by Larry Lair

15 DENIED. To form the basis of their opinions, defense experts
16 Dr. Keram and Massad Ayoob may rely on the statements made by Larry
17 Lair, who is now deceased.

18 8. Motion to Exclude Jones' Psychiatric Records or Testimony
19 Regarding Jones' Psychiatric Condition Prior to the Shooting
20 Incident

21 DENIED. Dr. Keram may discuss the psychiatric records she
22 relied upon to formulate her expert opinion. The January 1, 2004
23 police report is not independently admissible.

24 **Defendants' Motions in Limine**

25 1. Motion to Exclude References to Whether Defendants Have
26 Insurance

27 GRANTED. Plaintiffs do not oppose this motion.

28 2. Motion to Exclude Offers to Settle This Case and Other
Statements Made in Settlement Negotiations

GRANTED. Plaintiffs do not oppose this motion.

1 3. Motion to Exclude Any Reference to the January 1, 2009
2 Shooting of Oscar Grant at the Fruitvale BART Station or Other
Publicized Incidents of Police Misconduct.

3 GRANTED. Plaintiffs do not oppose this motion.

4 4. Motion to Exclude Arguments and Inferences Outside the Record
5 for "Political Effect."

6 GRANTED. Plaintiffs do not oppose this motion.

7 5. Motion to Exclude Percipient Witness Richard Davis from
8 Testifying or, in the Alternative, to Require that Davis
Appear at a Deposition Prior to Testifying at Trial.

9 GRANTED in part. Defendants shall be given the opportunity to
10 depose Davis as soon as possible. If Davis does not appear for
11 this deposition, Plaintiffs may not call him as a witness in their
12 case-in-chief.

13 6. Motion to Exclude Witnesses from Testifying as to Whether the
Shooting was a "Murder."

14 GRANTED. Similarly, Defendants' lay witnesses are also
15 prohibited from testifying as to legal conclusions about the
16 reasonableness of Williamson's actions.

17 7. Motion to Exclude Testimony by Plaintiffs' Witnesses that Del
18 Norte County Sheriff's Department Had a Custom and Practice of
Unconstitutional Use of Force

19 GRANTED. Plaintiffs do not oppose this motion.

20 8. Motion to Exclude Testimony that Deputies Williamson, Berry or
21 Garcia Were Inadequately Trained

22 DENIED. Evidence regarding the training of these deputies may
23 be relevant to a determination of whether the use of force was
24 reasonable under the circumstances.

25 9. Motion to Bar Plaintiffs from Presenting Evidence or Argument
26 that the Deputies Used Improper Tactics or That They Violated
Police Department Rules Prior the Shooting Incident Itself

27 DENIED. Evidence regarding the tactics used by the deputies
28 and whether they violated police department rules prior to the

1 shooting may be relevant to a determination of whether the use of
2 force was reasonable under the circumstances. The Court will
3 instruct the jury that the following are not necessarily civil
4 rights violations: (1) rule violations, (2) poor tactics that lead
5 to the need for the use of deadly force and (3) the use of greater
6 than the least possible force available to the deputies.
7 Plaintiffs have not stated the specific rule violations they seek
8 to introduce and when these violations occurred. Violations
9 unrelated to the shooting are not likely to be relevant.

10 10. Motion to Exclude Testimony or Argument that Deputy Williamson
11 Should Have Issued a Warning Before Using Deadly Force

12 DENIED. The jury may consider that Williamson did not issue a
13 warning to Jones before shooting him. Such evidence is relevant in
14 this case.

15 11. Motion to Exclude Any Testimony or Argument Regarding the Fact
16 that Defendant Did Not Apologize to Plaintiffs

17 GRANTED. Plaintiffs do not oppose this motion.

18 12. Motion to Exclude Evidence or Argument that Eric Jones Was
19 Unarmed

20 DENIED. The question of whether Jones posed an imminent
21 threat of serious injury or death to the deputies is central in
22 this case. Therefore, evidence that he was unarmed is relevant and
23 admissible.

24 13. Motion to Exclude Evidence of Past Complaints, Prior Use of
25 Force, or Any Disciplinary Actions or Reports Related to
26 Deputies Williamson, Berry or Garcia

27 GRANTED. Plaintiffs do not object to this exclusion but they
28 reserve the right to introduce this evidence if Defendants present
evidence on the topic.

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1 14. Motion to Preclude Plaintiffs from Offering Evidence of Their
2 Emotional Distress

3 Granted. Plaintiffs do not oppose this motion.

4 15. Motion to Exclude All Non-Party Witnesses from the Courtroom

5 Granted. Non-party witnesses may remain in the courtroom
6 after they have testified if they will not be called as rebuttal
7 witnesses.

8 IT IS SO ORDERED.

9 Dated: 04/07/10



10 CLAUDIA WILKEN
11 United States District Judge
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